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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/746,523	12/21/2000	Donald F. Hooper	10559-269001 / P9028	1036
20985	7590	08/13/2004	EXAMINER	
FISH & RICHARDSON, PC 12390 EL CAMINO REAL SAN DIEGO, CA 92130-2081			VO, TED T	
			ART UNIT	PAPER NUMBER
			2122	

DATE MAILED: 08/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/746,523

Applicant(s)

HOOPER ET AL.

Examiner

Ted T. Vo

Art Unit

2122

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 July 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, ~~the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.~~

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-22

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____


WEI Y. ZHEN
PRIMARY EXAMINER

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Continuation of 5. does NOT place the application in condition for allowance because:

Applicants' arguments in the Remarks section filed on 7/1/04 as Request for Reconsidered and Reexamination have been fully considered. However, the arguments are not persuasive.

In page 2 (Remarks section), at lines 2-3 of the fourth paragraph, Applicants stated "One skilled in the art would never equate 'instruction' to means 'a segment of executable code'". However, equating in this manner, "'instruction' to means 'a segment of executable code'" is not closed to or found in Office action mailed date, 04/20/04, as final action.

In page 2, at the last sentence of fourth paragraph, Applicants stated, "insertion of a breakpoint is not an insertion of a segment of executable code". However, this argument tends to narrow the whole view from the claimed recitation "inserting a segment of executable code into an unused section" and the view from reference's teaching for replacing breakpoint routine in unused space.

The whole reference would be respectfully considered, particularly, sections 4.17.2 and 4.17.3.

Section 4.17.2 discusses HOP MICROENGINES, the similar subject matter in which Applicants are claiming.

Section 4.17.3 discusses the insertion, including the instructions that cause to jump to breakpoint routine stored in unused space (See page 4.48, first paragraph, and see indentation/step 2).

It is noted that breakpoint routine included with breakpoints, jump instructions has means of a segment of executable code. It is noted that the existence of "breakpoint routine" stored in unused space also has means of inserting.

Applicants' arguments on the rejection of Claims 1-15 anticipated by Xu has been fully considered. Applicants merely argue that no segment of code is inserted (re: Remarks, page 3). Examiner maintains that the citations as given in Xu, such as in page 2, second column, first paragraph, 'patches a jump to a base-trampoline'; page 4, second column, section 3.4, first paragraph; 'past the point in which it was inserted', and second column, first paragraph, 'relocates the instructions that were overwritten'; page 3, figure 3, Mini Trampoline; or page 3, second column, second paragraph, 'we add code to the base-trampoline....to detect the first time a thread executes instrumentation code', interpret the claims as they broadly recite. Furthermore, the whole teaching of Xu would be respectfully considered.

Claim 22, which is rejected over Xu, recites a product that is corresponding to the functionality of Claims 1, and 8. The Examiner's response to the Applicants' argument to this claim would be maintained the same as discussed in Claims 1-15 anticipated by Xu above.

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